

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15th day of February, two thousand twelve.

PRESENT: RICHARD C. WESLEY,
RAYMOND J. LOHIER,
Circuit Judges,
LEE H. ROSENTHAL
*District Judge.**

UNITED NATIONAL INSURANCE COMPANY,

Plaintiff-Appellant,

-v.-

11-1174-cv

SCOTTSDALE INSURANCE COMPANY,

Defendant-Appellee.

FOR APPELLANT: STEVEN VERVENIOTIS (Michael A. Miranda,
on the brief), Miranda Sambursky Slone
Sklarin Verveniotes LLP, Mineola, NY.

FOR APPELLEE: STEPHEN D. STRAUS, Traub Lieberman Straus
& Shrewsberry LLP, Hawthorne, NY.

*Judge Lee H. Rosenthal, of the United States District Court for the Southern District of Texas, sitting by designation.

1 Appeal from the United States District Court for the
2 Eastern District of New York (Block, J.)
3

4 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
5 **AND DECREED** that the judgment of the United States District
6 Court for the Eastern District of New York be **AFFIRMED**.

7 Plaintiff-Appellant United National Insurance Company
8 appeals from the district court's (Block, J.) March 7, 2011
9 Memorandum and Order granting Scottdale's motion for summary
10 judgment pursuant to Federal Rule of Civil Procedure 56. We
11 assume the parties' familiarity with the underlying facts
12 and procedural history.

13 We review *de novo* a district court's grant of summary
14 judgment, with the view that "[s]ummary judgment is
15 appropriate only if the moving party shows that there are no
16 genuine issues of material fact and that the moving party is
17 entitled to judgment as a matter of law." *Miller v. Wolpoff*
18 *& Abramson, L.L.P.*, 321 F.3d 292, 300 (2d Cir. 2003).

19 Upon such review, we affirm for substantially the same
20 reasons set forth in the district court's thorough
21 Memorandum and Order.

22 Although we do not decide the issue, we question
23 whether an insurer, like United National, can seek, in a
24 declaratory judgment action, coverage for its insured where

1 it explicitly disclaims seeking any benefit for itself.
2 Even if, however, United National can properly bring this
3 action we agree with the district court that the plain
4 language of Scottsdale's policy does not require Scottsdale
5 to defend and indemnify 164 Atlantic and Two Trees. See
6 *Jefferson v. Sinclair Refining Co.*, 10 N.Y.2d 422, 426-27
7 (1961); *York Restoration Corp. v. Solty's Constr., Inc.*, 79
8 A.D.3d 861, 862 (2d Dep't 2010).

9 Finally, we conclude that Scottsdale was not estopped
10 from disclaiming coverage under New York Insurance Law
11 § 3420(d) because that provision does not require timely
12 disclaimer of coverage "when the policy on which the claim
13 rests does not, by its terms, cover the incident giving rise
14 to liability." *Handelsman v. Sea Ins. Co. Ltd.*, 85 N.Y.2d
15 96, 99 (1994). Because we agree with the district court
16 that Scottsdale's policy did not provide coverage for 164
17 Atlantic and Two Trees, we find section 3420(d)
18 inapplicable.

19 For the foregoing reasons, the judgment of the district
20 court is hereby **AFFIRMED**.

21
22 FOR THE COURT:
23 Catherine O'Hagan Wolfe, Clerk
24
25

The block contains a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". To the left of the signature is the official seal of the United States Second Circuit Court of Appeals. The seal is circular with a red border. Inside the border, the words "UNITED STATES" are at the top, "SECOND CIRCUIT" is in the center, and "COURT OF APPEALS" is at the bottom. There are small stars on either side of the center text.